

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

CAPITOL HILL ORTHODONTICS and
CHARLES W. EPPS
Respondents

Case Nos.: I-00-60126
I-00-60128

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and the District of Columbia Health Occupations Revision Act of 1985 (D.C. Official Code §§ 3-1201.01 *et seq.*). By Notice of Infraction (No. 00-60126) served July 2, 2001 by certified mail, the Government charged Respondents Capitol Hill Orthodontics and Charles W. Epps with a violation of D.C. Code § 2-3310.1 (now codified as D.C. Official Code § 3-1210.01) for allegedly practicing dentistry without a license, and D.C. Code § 2-3310.2 (now codified as D.C. Official Code § 3-1210.02) for allegedly misrepresenting to the public authorization to practice dentistry. The Notice of Infraction charged that Respondents committed these violations on June 21, 2001 at 411 8th Street, S.E., and sought a fine of \$500 for each violation, for a total of \$1,000.

Respondents failed to answer the Notice of Infraction within the allotted time period (fifteen days plus five days for mailing pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on September 19, 2001, this administrative court issued an order finding Respondents in default, assessing statutory penalties in the amount of \$1,000 pursuant to D.C. Official Code § 2-1801.04(a)(2)(A), and requiring the Government to issue a second Notice of Infraction pursuant to D.C. Official Code § 2-1801.02(f). The Government served the second Notice of Infraction (No. 00-60128) by certified mail on August 3, 2001.

Respondents failed to answer the second Notice of Infraction. Accordingly, on September 19, 2001, this administrative court issued a Final Notice of Default assessing an additional \$1,000 in statutory penalties pursuant to D.C. Official Code § 2-1801.04(a)(2)(B) and scheduling an *ex parte* proof hearing on October 17, 2001 pursuant to D.C. Official Code § 2-1801.03 at which Respondents could elect to appear and contest any fines or penalties assessed.

The hearing took place on October 17, 2001. Investigators Bryan Chase and Gregory Scurlock of the Department of Health's Health Care Licensing Division appeared on behalf of the Government. Respondents did not appear at the hearing and, pursuant to D.C. Official Code § 2-1802.03(b), the hearing took place in Respondents' absence. Based upon the testimony of the Government's witnesses, my evaluation of their credibility, the documents admitted into evidence and the entire record in this matter, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

1. As of April 3, 1993, Respondent Charles W. Epps accepted appointments at Respondent Capitol Hill Orthodontics located in the District of Columbia. PX 100 at 2. Respondents' current business address is 411 8th Street, S.E., Washington, DC. *See* Petitioner's Exhibit ("PX") 101 at 3, 6; PX 102. Respondent Epps's prior business address was 1318 Pennsylvania Avenue, S.E., Washington, DC. *See* PX 101 at 2, 4. Telephone calls to the prior business address go to the 411 8th Street, S.E. location, however. Respondent Epps's last known home address is 4203 Lauries Way, #203, Fairfax, VA. PX 103.
2. Respondent Epps advertised in the 2001 District of Columbia Yellow Book.Com under the category "Dentists" and was listed with the initials "D.D.S." or, alternatively, "M.D." after his name. *See* PX 101 at 3, 4. Respondent Epps was also listed in Internet Directory Assistance with the initials "Dds" after his name. PX 102.
3. On May 31, 2002, Investigator Chase visited Respondent Capitol Hill Orthodontics at 411 8th Street, S.E. and was advised by the receptionist on duty that Respondent Epps rented space there. Investigator Chase subsequently made a dental appointment by telephone for June 21, 2001 with Respondent Epps.
4. On June 21, 2001, Investigator Scurlock entered 411 8th Street, S.E. to take the appointment with Respondent Epps previously scheduled by Inspector Chase. Inspector Chase remained outside the building. After filling out various forms, the receptionist escorted Investigator Scurlock to an examination room.

5. Respondent Epps subsequently entered the examination room, asked about the nature of Investigator Scurlock's visit, put on rubber gloves, and proceeded to examine Investigator Scurlock's teeth and oral cavity. Upon the completion of the examination, Respondent Epps advised Investigator Scurlock that he found a few dental problems that, with treatment, could be corrected in approximately a year. Investigator Scurlock then advised Respondent Epps that he had to leave to attend to an emergency. Respondent Epps advised Investigator Scurlock that he could return to the office in the afternoon to follow-up on the examination if he wished. Investigator Scurlock then left the office.
6. Investigator Chase then entered the building and interviewed Respondent Epps. During the interview, Respondent Epps advised Investigator Chase that he was aware his license to practice dentistry in the District of Columbia had expired sometime during the 1980s. Respondent Epps did not, however, explain why he did not attempt to renew his license. After the interview, Investigator Chase personally served the first Notice of Infraction (No. 00-60126) upon Respondent Epps while at 411 8th Street, S.E.
7. On July 2, 2001, the Government served an amended Notice of Infraction (No. 00-60128) upon Respondents by certified mail at Respondent Epps's last known home address.¹ On August 3, 2001, the Government served Respondents the second Notice of Infraction (No. 00-60128) by certified mail at Respondent Epps's last known home address. *See* PX 103.

¹ Pursuant to the requirements of OAH Office Order 2000-03, as amended, the Government amended the original pre-scheduled hearing date on the Notice of Infraction (July 25, 2001) to August 29, 2001.

8. This administrative court's August 1, 2001 order of default and September 19, 2001 final order of default (to which copies of the first and second Notices of Infraction as well as the August 1st Order were attached) were served upon Respondents by priority mail/delivery confirmation at Respondent Epps's last known home address, and were not returned to this administrative court.
9. Respondents have offered no explanation for their failure to respond to the first and second Notices of Infraction.

III. Conclusions of Law

A. Service

1. Based on this record, I conclude that Respondent Epps had adequate notice of the charges against him for purposes of the Due Process Clause and the Civil Infractions Act of 1985. Personal service of the first Notice of Infraction, and service by mail to Respondent Epps's last known home address of the second Notice of Infraction as well as this administrative court's orders of August 1 and September 19, 2001, is sufficient notice. *See Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).
2. Pursuant to D.C. Official Code §§ 2-1801.04(a)(2) and 2-1802.02(f), a respondent that has been duly served a first and second Notice of Infraction and, without good cause, fails to answer those Notices of Infraction, shall be assessed a

statutory penalty equal to twice the amount of the authorized fine for the infraction(s) set forth in the Notices. Based on the record, Respondent Epps has not established good cause for failing to respond to the first and second Notices of Infraction. Accordingly, Respondent Epps shall pay statutory penalties in the total amount of \$2,000. *See DOH v. Capitol Hill Orthodontics*, OAH No. I-00-60126 at 2 (Final Notice of Default, September 19, 2001).

3. As for Respondent Capitol Hill Orthodontics, I conclude that it did not receive sufficient notice of these proceedings. The Government did not present any evidence at the hearing explaining the relationship between Respondent Epps and Respondent Capitol Hill Orthodontics beyond the statement of the receptionist that Respondent Epps rented space with Respondent Capitol Hill Orthodontics. Moreover, there is no evidence in the record as to the corporate status, if any, of Respondent Capitol Hill Orthodontics. *See DOH v. Peterson*, OAH No. I-00-60018 at 1 n.1 (Final Order, February 12, 2002) (dismissing respondent where it was found only to be a trade name and thus did not have the legal capacity to be sued as a respondent for purposes of the proceeding).
4. As a result, there is nothing upon which this administrative court can conclude that service of the Notices of Infraction and orders of this administrative court upon Respondent Epps as described above also constitutes sufficient service upon Respondent Capitol Hill Orthodontics. *Cf. Lawlor v. District of Columbia*, 758 A.2d 964, 975 (D.C. 2000) (noting piercing of corporate veil inquiry ultimately turns on whether the corporation “is, in reality, an alter ego or business conduit of the person in control”); *Ado Finance, AG v. McDonnell Douglas Corp.*, 931 F.

Supp. 711, 715-16 (C.D. Cal. 1996) (noting that where there is sufficient evidence that a corporation is an alter ego of an individual or another corporation, then a court may disregard the corporate form for jurisdictional purposes). Accordingly, the charges against Respondent Capitol Hill Orthodontics shall be dismissed, and the previously assessed statutory penalties shall be vacated for good cause shown.²

B. The Alleged Violations

5. Respondent Epps has been charged with a violation of D.C. Code § 2-3310.1 (now codified as D.C. Official Code § 3-1210.01) for allegedly practicing dentistry without a license.³ Section 3-1201.02(5)(A) defines the practice of dentistry as:

The diagnosis, treatment, operation, or prescription for any disease, disorder, pain, deformity, injury, deficiency, defect, or other physical condition of the human teeth, gums, alveolar process, jaws, maxilla, mandible, or adjacent tissues or structures of the oral cavity, including the removal of stains, accretions, or deposits from the human teeth.

² A dismissal of the charges against Respondent Capitol Hill Orthodontics on procedural grounds obviates the need for this administrative court to address the substantive question of whether the provisions of D.C. Official Code §§ 3-1210.01 and 3-1210.02 are applicable to Respondent Capitol Hill Orthodontics under these facts. *See* D.C. Official Code § 3-1201.02(5) (defining practice of dentistry for purposes of Chapter); *Peterson*, OAH No. I-00-60018 at 1 n.1.

³ D.C. Official Code § 3-1210.01 provides: “No person shall practice, attempt to practice, or offer to practice a health occupation licensed or regulated under this chapter in the District unless currently licensed, or exempted from licensing, under this chapter.” The practice of dentistry is a health occupation for purposes of this provision. *See* D.C. Official Code §§ 3-1201.01(7) and 3-1201.02(5).

6. On June 21, 2001, Respondent Epps examined the teeth and oral cavity of Investigator Scurlock and rendered a diagnosis as to the duration and efficacy of treatment based on that examination. Findings of Fact at ¶ 5. Such activities constitute the practice of dentistry. D.C. Official Code § 3-1201.02(5)(A). In addition, Respondent admitted to Inspector Chase that his license to practice dentistry in the District of Columbia had lapsed sometime during the 1980s. Findings of Fact at ¶ 6.
7. Accordingly, on June 21, 2001 Respondent Epps practiced dentistry at 411 8th Street, S.E. without a license to do so and, in so doing, violated the provisions of D.C. Code § 2-3310.1 (now codified as D.C. Official Code § 3-1210.01) as charged in the Notices of Infraction. A fine of \$500 is authorized for a first offense of this violation which, in light of the seriousness and duration of the violation, will be imposed without reduction. 16 DCMR §§ 3201.1(b)(1) and 3212.1(n).
8. Respondents Epps has also been charged with a violation of D.C. Code § 2-3310.2 (now codified as D.C. Official Code § 3-1210.02) for allegedly misrepresenting to the public that he was authorized to practice dentistry in the District of Columbia.⁴
9. By his own admission, Respondent Epps did not have a license to practice dentistry in the District of Columbia since sometime during the 1980s. Findings

⁴ D.C. Official Code § 3-1210.02 provides: “Unless authorized to practice a health occupation under this chapter, a person shall not represent to the public by title, description of services, methods, or procedures, or otherwise that the person is authorized to practice the health occupation in the District.” The practice of dentistry is a health occupation for purposes of this provision. *See* D.C. Official Code §§ 3-1201.01(7) and 3-1201.02(5).

of Fact at ¶ 6. Despite not having a license, Respondent Epps had been accepting appointments in the District since April 3, 1993. *Id.* at ¶ 1. He also advertised to the public that he was authorized to provide the services of a dentist in the District of Columbia, and listed “D.D.S.” after his name in some of those advertisements. *Id.* at ¶ 2.

10. Such activities on the part of Respondent Epps clearly communicated to reasonable persons that he was authorized to provide dental services to the public. Because he was not so authorized, Respondent Epps violated D.C. Code § 2-3310.2 (now codified as D.C. Official Code § 3-1210.02) as charged in the Notices of Infraction. *DOH v. Milton*, OAH No. I-00-60106 at 8 (Final Order, March 19, 2001) (holding that use of “D.D.S.” on office door and business cards communicated to the public that respondent was authorized to practice dentistry in the District of Columbia); *see also DOH v. Peterson*, OAH No. I-00-60018 at 5 (Final Order, February 12, 2002) (noting proper inquiry for determining violation of § 3-1210.02 “is not simply whether the Respondent used a medical title or a medical term . . . but whether the use of that title or term, considered in its context, would communicate to a reasonable person that the Respondent is offering [dental] services to the public.”).
11. A fine of \$500 is authorized for a first offense of this violation which, in light of the seriousness and duration of the violation, will be imposed without reduction. 16 DCMR §§ 3201.1(b)(1) and 3212.1(r).

IV. Order

Therefore, upon the foregoing findings of fact and conclusions of law, and upon the entire record of this matter, it is hereby, this ____ day of _____, 2002:

ORDERED, that all charges against Respondent Capitol Hill Orthodontics as set forth in Notices of Infraction (Nos. 00-60126 and 00-60128) are hereby **DISMISSED**, and the statutory penalties assessed Respondent Capitol Hill Orthodontics by this administrative court's orders of August 1, 2001 and September 19, 2001 are hereby **VACATED**; and it is further

ORDERED, that Respondent Charles W. Epps is **LIABLE** for violating the provisions of D.C. Code § 2-3310.1 (now codified as D.C. Official Code § 3-1210.01) and D.C. Code § 2-3310.2 (now codified as D.C. Official Code § 3-1210.02) as set forth in the Notices of Infraction (Nos. 00-60126 and 00-60128); and it is further

ORDERED, that Respondent Charles W. Epps shall pay fines and statutory penalties in the total amount of **THREE THOUSAND DOLLARS (\$3,000)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid

amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **04/08/02**

Mark D. Poindexter
Administrative Judge